

REMARKS

Status of the Claims

Claims 1-79 are pending in the application.

Claims 1, 2, 4, 5, 10-12, 19-23, 29, 46-50, 52-58, 68, 70 and 78 are amended with entry of this Preliminary Amendment.

Claims 3, 9 and 51 are cancelled with entry of the amendment.

Claims 1-2, 4-8, 10-50 and 52-79 remain pending in the application after entry of the amendment.

Summary

Claims 1-79 are pending in the application and were subject to a Species Election Requirement set forth in the Office Action dated 12 February 2007. Applicants have submitted a Preliminary Amendment herewith, and entry of the amendments to the claims prior to examination on the merits is respectfully requested.

Overview of the Amendment

Applicants, by way of this preliminary amendment, have submitted amendments to claims 1, 2, 4, 5, 10-12, 19-23, 29, 46-50, 52-58, 68, 70 and 78 in order to recite the invention with greater particularity and have cancelled claims 3, 9 and 51. More specifically, claims 3, 9 and 51 have been cancelled without prejudice and disclaimer. Applicants expressly reserve their right to bring the claims again in another related application. In addition, claim 1 has been amended to expressly recite certain dependent features found in the original claim set including those features from now cancelled claims 3, 9 and 51. Claims 2, 4, 5, 10-12, 19-23, 29, 46-50, 52-58, 68, 70 and 78 have merely been amended to correct certain obvious typographical errors, to correct antecedence due to cancellation of base claims and/or to conform the claims to the amendments to claim 1. Support for all of these claim amendments can be found

throughout the specification and claims as originally filed, and therefore no new matter has been added by way of these amendments. Entry of this Preliminary Amendment is thus respectfully requested.

The Species Election Requirement

The Office has required election of a species under 35 U.S.C. §121 from the following species:

- (a) one specific drug, that is, oxycodone, hydrocodone, oxymorphone, hydromorphone, barbiturate CNS depressant, or benzodiazepine CNS depressant.

The Office has further required election of a species under 35 U.S.C. §121 from the following species:

- (b) one specific solvent.

The Office asserts that each of the above-referenced “species” is independent and distinct on the basis that “they contain a variety of drugs and solvents [and] are capable of supporting different patents within the art.” Office Action at page 2.

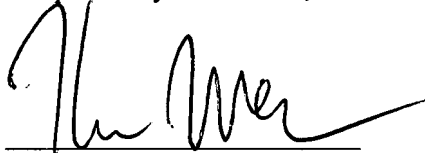
In response, applicants elect oxycodone for examination from Species (a), and ethyl lactate from Species (b) without traverse. Claims 1-2, 4-8, 10-31, 41-50, 52-64, and 68-79 are all readable upon these elected species, with claims 1-2, 4-8, 10-28, 41-50, 58-60, 68, 70, 73-75 and 77-78 being generic to all of the Species (a)-(b); claims 29-30, 61-63, 69, 71-72 and 79 being generic to Species (a); and claims 52-57 being generic to Species (b). This election of species is understood to be for initial searching purposes only, and applicants expressly reserve their right to have the other non-elected species examined upon allowance of a generic claim.

CONCLUSION

Applicants submit that the pending claims define an invention that is both novel and nonobvious over the cited art, and thus all claims are in condition for allowance. Acknowledgement of this by the Office in the form of an early allowance is thus respectfully requested. In addition, if the Examiner contemplates other action, or if a telephone conference would expedite allowance of the claims, applicants invite the Examiner to contact the undersigned at (408) 777-4915.

The fees for a three-month extension of time have been included with this communication, and no further fees are deemed necessary. However, if the Commissioner determines that additional fees are indeed necessary, or that no fees are due, the Commissioner is hereby authorized to charge any additional fees associated with this communication, or refund any inappropriate fees to Deposit Account No. **50-1953**.

Respectfully submitted,



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